

**AMENDMENT NUMBER 2
TO
CONTRACT NO. DIR-SDD-1075
BETWEEN
THE STATE OF TEXAS, DEPARTMENT OF INFORMATION RESOURCES
AND Texas NICUSA, LLC**

This Amendment Number 2 (the “Amendment”) to the TexasOnline 2.0 Master Agreement (the “Master Agreement”) dated July 31, 2009 is entered into by and between The State of Texas, acting by and through the Texas Department of Information Resources (“DIR”) and Texas NICUSA, LLC, a limited liability company with a principal place of business at 100 Congress Avenue, Suite 600, Austin, Texas 78701 (“Vendor”). Capitalized terms used but not otherwise defined in this Amendment shall have the meaning set forth in the Master Agreement. This Amendment is executed in accordance with the authority granted in the Master Agreement, Section 5 *Contract Amendments*.

All other terms and conditions of the Master Agreement as amended, not specifically modified herein, shall remain in full force and effect. In the event of any inconsistencies between the terms and conditions contained in the Master Agreement and the terms and conditions contained in this Amendment, the terms and conditions contained in the Amendment shall control.

History

As a result of DIR’s procurement of Data Center Services, DIR has entered into new agreements (the Master Data Center Services Contracts) with three new vendors (the Data Center Service Providers);

As a result of an early exit of the Data Center Master Services Agreement by and between IBM and DIR and IBM’s premature discontinuation of its provision of DCS Services, and pursuant to the First Amendment to the Master Data Center Services Contracts, Interim Walk In Take Over (WITO) services commenced on May 1, 2012 and terminated on June 30, 2012 (“WITO Period”). The required data center services provided under the DCS Contract and pursuant to the Master Data Center Services Contracts commenced on July 1, 2012;

Changes to the DCS program require (i) amending certain Master Agreement defined terms and definitions; (ii) a Data Center Services Cost Adjustment; and (iii) replacement of Attachment L-1 Managed Services Contract with the new Attachment L-1 DCS Contract, to address changed rights and obligations between DIR and Vendor relating to DCS managed services;

And, some Exhibit D Performance Criteria expected service levels have been reset and increased, and others are being included to reflect the expected service level already established but not previously documented in the Master Agreement;

Now therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Vendor and DIR agree to amend the Agreement to update the changed DCS vendors, applicable agreements, and applicable defined terms and definitions; to provide for a Data Center Services Cost Adjustment; and to update Exhibit D performance criteria, as follows:

Terms

1. Effective July 1, 2012, the term “Data Center Master Services Agreement” is replaced with the term “Master Data Center Services Contracts” throughout the Master Agreement
2. Effective July 1, 2012, the term “Team for Texas” is replaced with the term “Data Center Service Providers” throughout the Master Agreement.
3. Effective July 1, 2012, **Article II of Exhibit A - Definitions** is amended by deleting the term definition of the term “Data Center Services Master Services Agreement” and replacing it in its entirety with the following:

“Master Data Center Services Contracts – The contracts between The State of Texas, acting by and through DIR, and Data Center Service Providers, specifically: the Data Center Services Multi-sourcing Service Integrator Master Service Agreement with Capgemini America, Inc. dated December 28, 2011; the Data Center Services Service Component Provider Master Service Agreement with Xerox State and Local Solutions, Inc. dated December 30, 2011; and the Data Center Services Service Component Provider Master Service Agreement with Xerox Corporation dated January 23, 2012.”

4. Effective July 1, 2012, **Article II of Exhibit A - Definitions** is amended by deleting the term definition of the term “Team for Texas” and replacing it in its entirety with the following:

“Data Center Service Providers – The partners providing services under the Data Center Services Master Services Agreements, which currently include Capgemini America, Inc.; Xerox State and Local Solutions, Inc. and Xerox Corporation.”

5. Effective July 1, 2012, Article II of Exhibit A – Definitions is amended by adding the following definitions:

“DCS Contract” – The current Attachment L-1 to the Master Agreement which is the contract for Data Center Services managed services between DIR and Vendor which commenced on July 1, 2012.

“Managed Services Contract” – The previous Attachment L-1 to the Master Agreement which is the Managed Services Contract for Data Center Services between DIR and Vendor.”

6. Effective July 1, 2012, **Article II. Section 2.08 (e) of Exhibit C – Financial Model** is hereby updated and replaced in its entirety as follows:

(e) Vendor will coordinate with DIR through the Annual Budget, Budget Amendment, and Business Case processes for the Data Center and TEX-AN costs. A change of 5% or more in the total charges for DCS or TEX-AN services as a result of a change in either program’s pricing may trigger a Business Case Process to review the impact on the Annual Budget and prioritization of TexasOnline 2.0 Projects.

(i) Data Center Services Cost Adjustment – Effective July 1, 2012 there will be a monthly adjustment in the DCS expense for the Texas.gov budget due to a greater than 5% increase in DCS prices as a result of the transition to the new Data Center Master Services Agreements according to the formula and criteria below:

(1) Each month, DIR will submit to Vendor an invoice for DCS services provided to Vendor. If the Actual DCS Costs are less than or equal to the original Baseline DCS Monthly Costs (\$110,185.83), Vendor will pay the Actual DCS Costs and no DCS Cost Adjustment will be calculated. Otherwise, if the Actual DCS Costs exceed the original Baseline DCS Monthly Costs (\$110,185.83), Vendor will calculate the DCS Cost Adjustment amount by subtracting Baseline DCS Monthly Costs from Actual DCS Costs, all defined as follows:

DCS Cost Adjustment amount = Actual DCS Costs minus Baseline DCS Monthly Costs, but not less than zero dollars (\$0.00).

Actual DCS Costs = Actual monthly charges as defined per the new DCS Contract between the DIR and Vendor, including co-location charges.

Baseline DCS Monthly Costs = The total of (i) the average of total monthly DCS costs, including co-location costs, from June 2011 through May 2012 plus a 5% rate increase (which amount the parties acknowledge and agree equals \$110,185.83), with a 5% per annum rate increase applied each year beginning and effective on July 1, 2013; plus (ii) the costs of any new DCS services approved through a Business Case Process pursuant to subsection (4) below; minus (iii) Vendor’s portion of DCS cost savings for any DCS services that are terminated or relocated to data centers not subject to the DCS Contract, Co-location Services Contract or the Master Data Center Services Contracts, as determined pursuant to subsection (5) below.

(2) The DCS Cost Adjustment amount will be deducted from the monthly State Share paid by Vendor.

(3) For purposes of clarity, it is intended that the total monthly net Vendor obligation for DCS services going forward will be the lesser of either the Actual DCS Costs or the Baseline DCS Monthly Costs.

(4) Data Center Additional Services – Any potential new DCS services, except those exempted through existing DCS change control approval processes, must be originated through the Business Case Process. New DCS services shall be discussed, and cost allocations determined, through such Business Case Process and, if approved, will result in an agreed upon corresponding adjustment to the Baseline DCS Monthly Costs as described in subsection (1) above.

(5) Data Center Removed/Relocated Services – Unless exempted through existing DCS change control approval processes, for any DCS services which are terminated or relocated to data centers that are not subject to the DCS Contract, Co-location Services Contract or the Master Data Center Services Contracts (pursuant to the mutual agreement of the Parties, or pursuant to a Business Case Process), the Parties will determine a mutually agreeable estimate of the reduction in the ongoing costs for such terminated or relocated services through the Business Case Process. The resulting cost savings amount shall be split evenly between Vendor and DIR, and a corresponding adjustment to the Baseline DCS Monthly Costs will be applied as described in subsection (1) above.

(6) Data Center Required Services Adjustment - In the event that: (A) the cost to Vendor (either individually or in the aggregate) of compliance or remediation as referenced in items (a) through (c) of the DCS Contract, Section VI - TXNICUSA Participation, is not commercially reasonable with respect to any service(s) provided by Vendor under the Master Agreement; (B) the failure to so comply or remediate is likely to materially adversely affect the performance of such service(s); and (C) such service(s) could continue to be provided in an efficient and economical manner from a Vendor or third party data center where such compliance or remediation would not be required, then, in that event, Vendor shall be entitled to originate a Business Case Process to propose the relocation of such services to a Vendor or third party data center. Such a proposed Business Case must address the Disentanglement of such services.

7. Effective September 1, 2012, **Article II. Performance Criteria Contractual Principles, Section 2.02 (d) of Exhibit D – Performance Criteria** is hereby updated and replaced in its entirety as follows:

Vendor will provide continuous improvement of the performance criteria over the life of the Master Agreement. Once baseline performance criteria are mutually accepted, DIR and the Vendor will review all of the service levels beginning

March 1, 2011 and on an annual basis. Modifications to the expected service level and remedy units will be based on the following methodology:

Each modified expected service level for *Application Reliability – Existing TexasOnline Solutions and Application Reliability – Portal Presence* will be reset by an increase of one tenth of a percent (0.10%) at the beginning of each fiscal year beginning with FY2013 (which begins September 1, 2012), not to exceed a maximum expected service level of 99.90%.

8. Effective September 1, 2012, **Article II. Performance Criteria Contractual Principles, Section 2.07 (c), Service Level Name, Application Reliability – Existing TexasOnline Solutions; Expected Service Level cell only; of Exhibit D – Performance Criteria** is hereby updated and replaced in its entirety as follows:

FY2013 – Expected Service Level – 99.60%

FY2014 – Expected Service Level – 99.70%

FY2015 – Expected Service Level – 99.80%

FY2016 – Expected Service Level – 99.90%

Should DIR exercise its right to extend the Master Agreement beyond the Initial Term, the Expected Service Level for any extended Term shall be as follows:

FY2017 – Expected Service Level – 99.90%

FY2018 – Expected Service Level – 99.90%

9. Effective September 1, 2012, **Article II. Performance Criteria Contractual Principles, Section 2.07 (c), Service Level Name, Application Reliability – Portal; Expected Service Level cell only; of Exhibit D – Performance Criteria** is hereby updated and replaced in its entirety as follows:

FY2013 – Expected Service Level – 99.60%

FY2014 – Expected Service Level – 99.70%

FY2015 – Expected Service Level – 99.80%

FY2016 – Expected Service Level – 99.90%

Should DIR exercise its right to extend the Master Agreement beyond the Initial Term, the Expected Service Level for any extended Term shall be as follows:

FY2017 – Expected Service Level – 99.90%

FY2018 – Expected Service Level – 99.90%

10. Effective January 1, 2010 to reflect the expected service level established using the average of production data collected during Implementation, **Article II. Performance Criteria Contractual Principles, Section 2.10 (a), Service Level Name, Help Desk – Abandon Rate; Expected Service Level cell only; of Exhibit D – Performance Criteria** is hereby updated and replaced in its entirety as follows:

The Abandon Rate will not exceed 1.5% of phone calls to the Help Desk in a given month.

11. Effective July 1, 2012, **Article II. Documents References, Table 1: Exhibit L Attachments, in Exhibit L Data Center Services** is hereby updated and replaced in its entirety as follows:

Title	Description and Contents
<i>Attachment L-1 Data Center Services</i>	Executed DCS Contract between DIR and Vendor
<i>Attachment L-2 Co-location Services Contract</i>	Executed Co-location Services Contract dated November 4, 2008 between DIR and Texas NICUSA, LLC, as successor in interest to BearingPoint, Inc.
<i>Attachment L-3 Co-location</i>	List of equipment subject to the Co-location Contract

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IN WITNESS WHEREOF, the parties having read and understood the foregoing sections of the Master Agreement as Amended including all Attachments and Exhibits incorporated therein by reference, expressly agree to these terms and conditions as evidenced by their respective dated signatures below:

DEPARTMENT OF INFORMATION RESOURCES

TEXAS NICUSA, LLC

Signature: _____

Signature: _____

Name: Carl Marsh

Name: Jeffery A. McCartney

Title: Chief Operating Officer

Title: President

Date: _____

Date: _____

Legal: _____